



RICK CLAYBURGH
TAX COMMISSIONER

Property Tax Newsletter

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APPLICATIONS FOR ABATEMENT AND REFUND OF TAXES

North Dakota Century Code (N.D.C.C.) ch. 57-23 specifies the formal method available to correct real property assessments and refund property taxes whenever the assessment on property is considered excessive, illegal or inequitable. Applications for Abatement and Refund of Taxes have been available for many years and yet there tends to be confusion regarding the application process.

The process begins when any person who has an estate, right, title or interest in a property files an Application for Abatement or Refund of Taxes with the County Auditor. An application regarding the current year's assessment may be filed *anytime* after the State Board of Equalization finalizes the assessments. Individuals do *not* need to wait until they receive their tax statement or pay the tax in order to file an application. However, the application must be filed with the County Auditor by November 1 of the year following the year in which the tax becomes payable. For example, an Application for Abatement or Refund of Taxes regarding the 1997 property tax *must be* filed with the County Auditor *no later than* November 1, 1999.

The County Auditor records the date of filing, files one copy of the application in the office and forwards a copy of the application to the City Auditor if the property is located in an incorporated city or the Township Clerk if the property is located in an organized

township. The County Auditor has *no* authority to hold the application indefinitely. Applications should be forwarded the same day they are filed. County Auditors need to monitor the process so that hearings are held timely and applicants are properly informed of the hearing before the board of county commissioners.

Within ten days after receiving the application, the City Auditor or Township Clerk must give the applicant notice of a hearing before the appropriate governing board. The hearing must be held *no later than* 60 days after the date of the notice of hearing and before the township or city governing board makes a recommendation regarding the application. The Township Clerk or City Auditor *must* endorse the recommendation of the local governing board on the back of the application and return it to the County Auditor within 30 days of the date the township or city governing board acted upon the application.

The applicant may waive the hearing before the governing body of the city or township at any time prior to the meeting to consider the application by providing a written statement of waiver to the City Auditor or Township Clerk, who should attach the statement to the application and return it to the County Auditor.

The County Auditor can monitor the timeliness of the hearing process by reviewing the abatement file book on a monthly basis. An application for Abatement or Refund of Taxes should be returned by the Township Clerk or City Auditor to the County Auditor within approximately 105 days or 3 ½ months of the date it was filed with the County Auditor.

When the application is returned to the County Auditor with the recommendation of the township or city governing board, the County Auditor provides the applicant a ten-day notice of hearing and lists the Application for Abatement or Refund of Taxes on the agenda for consideration at the *next* regular meeting of the Board of County Commissioners. The Board of County Commissioners either approves or rejects the application in whole or in part. North Dakota Century Code ch. 57-23 provides that the County Auditor must send an applicant a copy of the application only if it is rejected by the Board of County Commissioners. As a public service, the County Auditor could send a letter to inform an applicant that the application has been approved.

Taxpayers have the right to timely abatement hearings and board action. The County Auditor can best serve the public in this matter by monitoring the application process and informing township and city governing boards of the required time limit for acting on applications. The County Auditor can include a cover letter with each application sent to City Auditors and Township Clerks indicating the time limits for notifying applicants and the hearing before the local governing board. The County Auditor should notify governing boards of any outstanding applications and the need to take action and return them to the County Auditor's Office as soon as possible. If necessary, the County Auditor should discuss the matter with the County States Attorney.

TELECOMMUNICATIONS GROSS RECEIPTS TAX AND LOCAL ASSESSMENT

Telecommunications carriers and other owners of real property used by telecommunications carriers may apply for property tax exemption under the in-lieu provisions of N.D.C.C. ch. 57-34, the Telecommunications Gross Receipts Tax. The Tax Department recommends assessing officials require an applicant to include a copy of a completed Telecommunications Gross Receipts Tax return for the appropriate year with the application for exemption or abatement.

North Dakota Century Code ch. 57-34 does not require property to be owned by a telecommunications carrier to be exempt from property taxation. The property must be directly used by a telecommunications carrier in its telecommunications operations. Therefore, property leased to a telecommunications carrier may qualify for exemption.

The Telecommunications Gross Receipts Tax enacted by the 1997 Legislature is “in lieu of all real and personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is directly used by the telecommunications carrier in its telecommunications operations.” (N.D.C.C. § 57-34-11) (Emphasis supplied.) “‘Telecommunications service’ means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:

- a. Essential telecommunications service and nonessential telecommunications service as defined in § 49-21-01;
- b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
- c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state; and
- d. Telegraph service.” (N.D.C.C. § 57-34-01(6))

Property used for purposes other than those listed above is not exempt from property tax assessment. If part of a property is used for two-way communications and part is used for something else, the assessor should value the part that is not used for two-way communications. For example, if a tower is used 75 percent for two-way communications and 25 percent for one-way, 25 percent of the value of that tower is subject to local assessment. If property leased to a government agency is used for two-way telecommunications, that property is *not* exempt from local assessment because the government agency is not subject to the Telecommunications Gross Receipts Tax. Other uses of property that are not covered by the in-lieu provisions of N.D.C.C. ch. 57-34 include, but are not limited to:

- Merchandising
- Jobbing
- Contract work
- Maintenance or repair of customer equipment
- Installation of equipment into customer vehicles
- Operations not directly related to provision of telecommunications service
- Billing and collection on behalf of another telecommunications carrier

RURAL ELECTRIC COOPERATIVE GROSS RECEIPTS TAX AND LOCAL ASSESSMENT

Personal and real property, other than land, owned by rural electric cooperatives is exempt from local assessment when used in connection with the distribution, transmission and generation of electricity. Property owned by a for-profit subsidiary of a cooperative is subject to assessment. When property owned by a cooperative is used for something other than the electric business, the Office of State Tax Commissioner has taken the position that the property is exempt from local assessment if the gross receipts from that property are included in the cooperative's report of gross receipts for taxation under N.D.C.C. ch. 57-33.

WHAT WOULD YOU DO?

If you were presented with the following question, how would you answer it? Would the individual qualify for property tax exemption?

The widow of a serviceman has lived out of state for many years and is considering moving to North Dakota. The serviceman was killed in action and the widow did not remarry. Would the residence she chooses to reside in be eligible for the property tax exemption allowed by N.D.C.C. § 57-02-08(20)(b) for disabled veterans of the armed services or the unremarried surviving spouse of a disabled veteran?

The primary question relates to whether the serviceman who was killed in action qualifies as a disabled veteran. The Code of Federal Regulations (C.F.R.) is used by the United States Veterans Administration (VA) to establish policies regarding benefits for veterans. The following provisions pertain to the question under consideration.

38 C.F.R. Part 3, Adjudication, subsection 3.1(d) provides:

(1) For compensation and dependency and indemnity compensation the term "veteran" includes a person who died in active service and whose death was not due to willful misconduct.

38 C.F.R. Part 3, subsection 3.312 provides:

(a) *General*. The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the principal or a contributory cause of death.

38 C.F.R. Part 3, subsection 3.1 provides:

(k) "Service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in the line of duty in the active military, naval, or air service.

The Veterans Administration considers an individual a veteran if the individual is killed in action while serving in the armed forces. The VA considers death a service-connected disability if it occurred or was aggravated while in active military service.

Therefore, the Office of State Tax Commissioner takes the administrative position that a service member who was killed in action while serving in the armed forces qualifies as a disabled veteran and the unremarried surviving spouse of such a disabled veteran is eligible for a property tax exemption according to N.D.C.C. § 57-02-08(20)(b). The applicant must apply annually for the exemption by providing the assessor with an application containing the legal description of the property and an affidavit that the income does not exceed the amount allowed to qualify for homestead credit. In addition, the applicant claiming exemption for the first time must file with the County Auditor a certificate from the United States Veterans Administration certifying the amount of disability.

WHICH COMES FIRST - PROPERTY TAX EXEMPTION OR HOMESTEAD CREDIT?

Some residential properties qualify for both a property tax exemption and the property tax (homestead) credit. Which should be applied to the assessment first - the exemption or the homestead credit?

Because both may be applied to an assessment, assessment officials should calculate the benefit both ways and apply it to the assessment so that the taxpayer benefits the most. For example, the residence of a permanently and totally disabled person who is permanently confined to use of a wheelchair qualifies for property tax exemption according to N.D.C.C. § 57-02-08(20)(c). Because the total net income of the applicant and spouse is less than \$14,000, the residence is also eligible for homestead credit according to N.D.C.C. § 57-02-08.1 beginning with year 2000. The exemption according to N.D.C.C. § 57-02-08(20)(c) applies only to the building value whereas the homestead credit applies to the total value (land and building). In most

circumstances, it will benefit the taxpayer most if the assessor applies the property tax exemption to the building value first and then applies the homestead credit to the land value and any remaining building value.

In summary, the Office of State Tax Commissioner recommends assessment officials calculate the benefits both ways and apply them to the property assessment in the order which best benefits the taxpayer.

MORE ON PROPERTY TAX EXEMPTIONS

The governing body of a city for property located within city limits or the board of county commissioners for property located outside city limits must pass separate resolutions to allow any of the following exemptions - exemption of new single family residences, condominium and townhouse properties (N.D.C.C. § 57-02-08(35)(36)), and exemption of improvements to commercial and residential buildings (N.D.C.C. ch. 57-02.2).

A governing board may restrict any of these property tax exemptions but the board has no authority to expand the exemptions beyond what the statutes allow. Once a governing board passes a resolution allowing the exemption(s) and a property meets the qualifications set out in the statute and the resolution, the board cannot discriminate as to which properties will or will not be eligible for the exemptions.

TAX DEED PROCEEDINGS

For property taxes levied prior to tax year 1999, county auditors must use the tax sale and redemption procedures as used in the past and outlined in Section T of the Property Taxation Manual.

Beginning with 1999 property taxes, due and delinquent in 2000, there will no longer be tax sale proceedings and redemption of property. Instead, there will be tax lien and proceedings for foreclosure and satisfaction of tax lien. For additional information regarding these procedures, county auditors may refer to chapter 503 of the 1999 Session Laws of North Dakota.

LAST EDUCATIONAL OPPORTUNITY OF THIS MILLENNIUM

If you are looking for education credit before the end of this millenium, the Office of State Tax Commissioner will provide one more opportunity to receive 30 hours of appraisal education. Course 201-A *Residential Property Appraisal* will be conducted December 6 - 10, 1999, in Bismarck. In order to obtain 30 hours of education credit, the students will appraise a single family residence, write a limited narrative appraisal report and complete an examination. Assessment officials may audit the course by completing a limited narrative appraisal and will receive a maximum of 25 hours of continuing education credit.

The Office of State Tax Commissioner has three courses scheduled during 2000.

Course 203-B	Commercial Cost Approach	Feb. 7 - 11, 2000
Course 303	Teaching Appraisal Techniques	May 15 - 19, 2000
Course 102	Principles & Theory of Value	Oct. 16 - 20, 2000

Course brochures will be mailed at least six weeks prior to a scheduled course.

Need Assistance?

Please direct property tax questions or concerns to:

Office of State Tax Commissioner
Property Tax Division
600 E. Boulevard Ave.
Bismarck, ND 58505-0599
Phone: (701)328-3127
Toll free within state: 1-800-638-2901, option 5
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Website: <http://www.state.nd.us/taxdpt>